THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.7226 OF 2006

ORDER:

The petitioners claimed to be partners of a registered firm in the name and style of M/s.Pannalal Ramlal Kimtee and Sons. The firm purchased land in survey Nos.129/44, bearing premises
No.8-2-686 of Shaikpet village, Hyderabad District under registered sale deed, dated 21.03.1968. At the relevant time, the firm had twelve partners. After coming into force, Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity), all the partners filed declarations under Section 6 of the Act being C.C.Nos.UC.1/9326 to 9337 before the Special Officer and Competent Authority for urban agglomeration of Hyderabad, the second respondent herein.

All of them claimed the holding of 1,000 square meters. The declarations are possessed but the Special Officer computed to the single holding of the firm represented by S.R.Kimtee though the partners claimed one holding each. The prayer of the petitioners to exempt an extent of 10,788 square meters covered by roads and parks in the layout, which they allegedly developed, was negatived. Therefore, against the final computation, under Section 8(4) of the Act read with section 9 of the Act, by proceedings dated 15.10.2003 of the second respondent, the petitioners preferred an appeal before the first respondent under Section 33 of the Act. The appellate authority placing reliance on the decision of this Court in **Special Officer and Competent Authority, ULC v Jyoti Art Studio** treated all the partners as declarants, allowed 1,000 square meters each as the holding of the partners, negatived exclusion of the land and determined an extent of 11,875 square meters as a surplus land to be taken over possession. Aggrieved by the same, the present writ petition is filed.

The learned counsel for the petitioners submits that the original authority as well as appellate authority did not consider the plea of the petitioners that there was a layout in right perspective. He submits that by the time the Act came into force, there was layout over the land and space was earmarked for roads, common areas and open spaces. These are to be exempted from the computation of the declarants. He also submits that the firm submitted a layout in 1978, the Municipal Corporation, without verifying the same, rejected the application. He also submits that if the land covered by the roads, other facilities are exempted from the holding of the petitioners, the petitioners' land cannot be taken possession as they have already made application under G.O.Ms.No.456, dated 27.05.2002 for regularization of surplus land admeasuring 3,497 square meters.

The question whether the land in respect of which the firm and its partners filed declarations is covered by approved layout sanctioned by Municipal Corporation of Hyderabad (MCH) is a disputed question of fact. The petitioners produced a copy of the plaint allegedly attested on its reverse by the MCH. Having found that there was no approval of the layout as such, while rejecting the claim, the original authority observed as under.

> The declarant has furnished a copy of the plan attested on its reverse by MCH. The said copy has been examined. The date of endorsement, permit No. & letter No. are left blank in the said copy. It is found to be a mere communication to the declarant to demarcate the boundary roads and open spaces. It was mentioned on it that the communication does not confer any right for sale or allotment of the plots. It was also stamped on it stating that "permission accorded does not bar the application of provisions or Urban Land (Ceiling & Regulation) Act, 1976. Thus it is clear that the said endorsement is not at all a permission for the layout. Whatever permission is said to have been accorded for demarcation, it is illegal as it has been issued after the commencement of the UL (C&R) Act, 1976 and in contravention of the said Act. Thus the claim of the declarant that he has obtained lay out permission from MCH is false and the document furnished is illegal and cannot be relied upon. Fact remains that so far no lay out has been sanctioned in the said land by any statutory authority. Therefore, the request of the declarant for excluding 10778.00 sq.mtrs of land U/s.2(q)(i) of the Act from the computation is rejected.

The above findings of the original authority were accepted by the first respondent observing as under.

> As regards the contention to exclude 8378 sq.mts from computation of 'vacant land' as was done in the order dated 4-11-81 the then Special Officer, it is seen from the records that there is no approved of layout at all. Paying layout fee of Rs.1586 on 28-2-1970 to MCH by itself cannot be taken as obtaining layout approval/permission. Only when there is an approved layout the actual extents to be ear-marked for roads/parks and other amenities could be known authentically, working out extents for Roads/Parks, etc., with reference to building rules theoretically & deleting from computation of vacant land is not intended by the Judgment in ALD 2003 (5) 68 (SC) relied upon. The extents can be deducted from the computation only when there is an approved layout prior to the Act and it is accordingly followed on ground also. I am therefore not inclined to accept this plea and it is accordingly rejected.

Even before this court, the petitioners have not placed any material to show that they applied for layout in 1970 and that such layout was approved by the MCH. Mere division of land on the ground without there being approved layout cannot be treated legal nor the roads, common areas, parks etc., in such layout can be treated the land as described under Section 2(q)(i) of the Act.

After giving due consideration to the submission and perusing the orders of the original authority as well as the appellate authority, this Court is convinced that both the orders do not suffer from any vice and interfered is not called for.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

.04.2006

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